



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Approved by Philippe Morel, ADM
Aquatic Ecosystems
Docket #: 2018-009-00774
Security Classification: SECRET

NOTE FOR THE DEPUTY MINISTER

TMX DEPUTY MINISTER OVERSIGHT COMMITTEE – DECEMBER 14, 2018

Date and Location of Meeting

The meeting will take place at 580 Booth Street (13:00-14:00). The meeting agenda is included as Tab 1.

NEB Marine Reconsideration

MPMO will provide an update on the coming round Information Requests (IRs) expected to be received from all intervenors. All IRs directed at intervenors are due to be filed with the National Energy Board (NEB) by 18:00 on December 17, 2018.

It is expected that there will be a high volume of IRs (> 1000) directed at Federal Authorities, with a compressed period over the holidays to respond (December 17-31, 2018). DFO will participate in triage with the Federal Review Team and work diligently to assign and respond to IRs in the most efficient way possible.

IRs identified as a priority are to be approved and delivered to the DoJ by December 27, 2018, for a crosswalk with Trans Mountain Responses to IRs. The DoJ will not approve Departmental IR responses, however all remaining approved and final responses are to be delivered to the DoJ no later than 9:00 December 28, 2018, for formatting and filing with the NEB.

The limited timelines, and response period will make responding to IRs challenging. Based on mandates and expertise, similar IRs may require responses from multiple departments. Depending upon how the request is directed or worded multiple response may be necessary. Limiting responses to one department should not be considered a time saving strategy, as incomplete responses could lead to motions to compel complete responses at a later date. DFO intends to respond to IRs factually and with information that is available or could be gathered within the timeframe.

MPMO has identified Google Docs, an online word processor, as a means to coordinate and collaborate among Federal Authorities during the triage and response process for IRs.

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s.21(1)(b)

Intervenor written evidence submissions were filed on December 5, 2018. DFO staff have reviewed the evidence of other intervenors, but have not identified any IRs to serve on other intervenors or Trans Mountain. On initial review, intervenors have identified concerns over spill response capacity, the limited scope, timeline and process of the Reconsideration Hearing and the ability of federal regulators to impose checks and balances now that Canada owns the project. Intervenor are also concerned that the effects of an oil spill cannot be mitigated and that it is not possible to mitigate the effects of project related shipping on SRKW and their critical habitat.

s.23

The Department of Justice (DoJ) submitted the IR responses of Federal Authorities to NEB IRs No. 1 and No. 2, on December 10, 2018. Many of the Board's requests were technical in nature and efforts were made to coordinate to the extent possible to ensure full coverage in responses and to limit contradictory messaging.

Responses largely refer to previously published material or evidence already on the hearing record.

It was extremely challenging to deliver on the NEB IRs and significantly more requests are expected from Intervenor on December 17 with responses due December 31. In addition, filing responses through the Department of Justice (DoJ) is not standard practice for environmental assessments.

Indigenous Consultation

Natural Resources Canada (NRCan) will provide an update on planning for the Crown Consultation approach.

NRCan advised that 48 groups have signaled an interest in participating in Phase III consultations. MPMO has contacted 29 groups to set up meetings. Introductory meetings will continue in December with substantive meetings with groups beginning in January.

Justice Iacobucci held the first of four roundtables in Edmonton on November 30, 2018, and additional roundtables in Kamloops (Dec 10), Vancouver (Dec 11) and Victoria (Dec 12). During the roundtables, Justice Iacobucci presented his mandate and the Government's consultation approach.

DFO-CCG awaits further information from NRCan on how the consultation approach will be delivered. DFO-CCG are actively in the process of advancing staffing actions to meet MPMO's request to house Departmental staff at NRCan. Additional information on roles and responsibilities has been requested so that appropriate resources can be identified.

The concerns of Indigenous groups impact heavily on the Department's mandate. DFO's internal approach for managing TMX integrates the technical review with the consultation into one team. Despite resources being seconded to NRCan, the Department forecasts a significant workload with the consultation.

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Next Steps on Accommodation Mandate

DFO expects to be highly implicated in relation to potential impacts identified by Indigenous groups along with proposals for accommodation. The Department anticipates engagement in discussions and proposals on species at risk issues, fisheries allocations, co-management and vessel traffic conflicts. The Department's mandate is front and centre with many complex issues.

s.69(1)(g) re: (a)

s.69(1)(g) re: (c)

TMX DM Oversight Committee

December 14, 2018 | 13:00 – 14:00

1. NEB Marine Reconsideration

- Information Requests
(*Jeff Labonté*)
- Communications: Proposed Approach
(*Mollie Johnson*)

2. Indigenous Consultation

(*Samantha Maislin Dickson*)

- Roundtables
- Update on Progress

3. Next Steps on Accommodation Mandate

(*Samantha Maislin Dickson and Jeff Labonté*)